IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Cri. Appln. No.1381/2007

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Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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**CORAM :** A.P. Lavande, J**.**
**Dated : June 13, 2007**

Heard Mr. Kotwal, learned counsel for the applicant, Mr. Doifode, learned A.P.P. for respondent and Mr. Sambre, learned counsel for the complainant.

Apprehending arrest in Crime No. 132/2007 registered at Ganeshpeth Police Station for offence punishable under Section 306 of the Indian Penal Code the applicant has filed present application seeking anticipatory bail. The applicant was granted ad interim bail by the Additional Sessions Judge, Nagpur which was vacated by order dated 9/5/2007. This Court has also granted interim bail to the applicant by order dated 18/5/2007.

Deceased Smita Kshirsagar married

the applicant on 25.11.2006. Deceased was a Civil Engineer serving in a private establishment and drawing higher salary as compared to the applicant. On 17.4.2007 at about 10.30 p.m. she was admitted to Sawarkar Hospital by the applicant in a serious condition. At about 1.30 a.m. on 18.4.2007 Smita expired. The father of the deceased Smita lodged F.I.R. at Ganeshpeth Police Station at about 8.00 a.m. on 18.4.2007 alleging that on account of demand of money and the amount of salary the applicant used to beat, harass and ill-treat Smita and on account of persistent ill-treatment she committed suicide. Pursuant to the F.I.R. the investigation was taken up. The dead body was sent for post-mortem and after the post-mortem vicera was sent for chemical analysis. In the course of the investigation, the statements of the witnesses have been recorded by the Investigating Agency. C.A. report has been already received which discloses that deceased Smita died on account of

consumption of poison. It is not disputed by the applicant that the deceased Smita died on account of consumption of poison. It is not disputed by the applicant that deceased Smita died on account of suicide committed by her. It is the contention of the applicant that Smita committed suicide on account of ill-treatment meted out by her parents whereas it is the case of the prosecution that she committed suicide on account of ill-treatment arising out of demand of money and salary, meted out by the applicant.

Mr. Kotwal, learned counsel for the applicant placing reliance upon the letters addressed by the deceased to the applicant submitted that the said letters clearly make out a case of ill-treatment made by her parents and, therefore, the applicant has been falsely implicated in the crime by the parents who are themselves responsible for suicide of their daughter. According to Mr. Kotwal, the independent witnesses whose statements were recorded by the Investigating Officer do not support the

prosecution case. He further submitted that the applicant is a Government servant and in case he is arrested, he is likely to lose his job and also his aged parents would suffer. He further urged that the applicant has cooperated with the Investigating Agency during the period he was granted interim bail both by the Sessions Court and by this Court and further that custodial interrogation of the applicant is not warranted. According to Mr. Kotwal, the only consideration for grant of refusal of anticipatory bail are tampering with the prosecution evidence and likelihood of abscondance of the accused. In support of his submissions, Mr. Kotwal relies upon the following authorities :-

1. AIR 1978 SC 1016 (Miss Harsh Sawhney Vs. Union Territory (Chandigarh Admn.);

2. 1981 Mh.L. J. 791 (Jagannath Ramchandra Biyani Vs. State of Maharashtra)'

3. AIR 2002 SC 1998 (Sanju alias

Sanjay Singh Sengar Vs. State of Madhya Pradesh) and

4. (2005) 2 SCC 686 (M.P. Lohia Vs. State of W.B. and another).

Per contra, Mr. Doifode, learned A.P.P. appearing on behalf of the respondent submitted that the investigation carried out so far prima facie makes out offence under Section 306 of the Indian Penal Code against applicant and there is absolutely no material on record to implicate the parents in the commission of the crime. He further submitted that deceased Smita has committed suicide within five months of the marriage and, therefore, presumption under Section 113-A of the Indian Evidence Act is clearly attracted since there is prima facie evidence that the applicant had subjected her to cruelty. He further submitted that offence alleged against applicant for which there is prima facie material is a serious offence and, therefore, this is not a fit case for grant of anticipatory bail. In support of his submissions, Mr. Doifode relies upon the

following authorities:-

1. 1999 Cri.L.J. 162 (State of Gujarat Vs. Dipal Jaswantlal Sheth);

2. 1987 Cri. L.J. 705 (Samunder Singh Vs. State of Rajasthan and others) and

3. 2000 Cri. L.J. 4481 (Sanjay Malhotra Vs. State of Punjab).

Mr. Sambre, learned counsel appearing for the complainant Ramesh Mendhe, the father of the deceased Smita adopted the arguments of Mr. Doifode and submitted that there is absolutely no material on record to suggest that the parents of the deceased are responsible for suicide of the deceased.

Having considered the submissions made by learned counsel for the parties and learned A.P.P. and having perused the record, I am of the opinion that this is not a fit case in which the applicant deserves to be granted anticipatory bail. The statements of the witnesses namely Ramesh Mendhe, Smt. Pushpa Mendhe, Tulshiram Manwatkar, Smt. Wasumati Chaware, Ku.

Apeksha Mendhe clearly support the case of the prosecution. It is well settled that at the stage of consideration of application for bail/anticipatory bail the Court is not entitled to meticulously analyse the material on record. At this stage, the Court has to find out whether prima facie there is material against the applicant. Moreover, the post-mortem report also discloses that there were four injuries on the dead body of the deceased which were fresh, out of which only one was Therapeutic. The records clearly disclosed prima facie material against the applicant in the commission of offence punishable under Section 306 of the Indian Penal Code.

Insofar as the argument of Mr. Kotwal that nothing more is required to be investigated since the statement of the applicant has been recorded by the Investigating Officer while he was on interim bail is concerned, I do not find any merit therein. Merely because in favour of an applicant ad interim bail is granted pending

hearing and final disposal of anticipatory bail application, by itself, is not sufficient to hold that no further investigation needs to be carried out. In the present it cannot be said that the custodial interrogation of the applicant is not warranted. Moreover, the offence alleged against applicant is of serious nature. Insofar as the argument of Mr. Kotwal that the Court has to have regard to only two considerations as stated by him is concerned, again I am unable to accept the same. These considerations are relevant for the purpose of considering the application for bail. It is well settled that consideration for grant of bail and anticipatory bail are different (See Pokar Ram Vs. State of Rajasthan and others : AIR 1985 Supreme Court 969). Grant of anticipatory bail to an accused involved in serious offence seriously interferes with the investigation of the crime.

Considering the nature of the crime alleged against applicant and prima facie material available on record, I am of the

considered opinion that this is not a fit case in which the applicant deserves to be granted anticipatory bail. Therefore, I do not find any merit in the present application. Hence, the application is dismissed. Interim order dated 18.5.2007 stands vacated.

Needless to mention that in the event the applicant is arrested and/or surrenders and files bail application, the concerned Judge shall decide the same on its own merits uninfluenced by the observations made in this order.

JUDGE

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